

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 1123/2007 & CM Nos. 10324/2007 and 10325/2007**

Reserved on: July 25th, 2008

Date of Decision : 8th August 2008

Delhi Development Authority

.....Appellant

Through : Mr.Pawan Mathur,
Advocate.

versus

Thakur Dass

.....Respondent

Through : Ms. Richa Kapoor,
Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

JUDGMENT

08.08.2008

: MUKUL MUDGAL,J.

1. This appeal arises out of the order dated 23rd April, 2007 wherein the learned Single Judge allowed the Writ Petition(C) No. 6287/2007 inter alia holding that the petitioner/respondent deserves equitable relief and having included the name of the petitioner/respondent in the draw held on 24th November, 2004 and having allotted a flat to him, the Delhi Development Authority, appellant herein, could not plead any prejudice. The Court further directed that the petitioner/respondent be allotted the flat in question after the petitioner/respondent pays the cost of the flat prevalent as on three months after the date of the draw held on 24th November, 2004 within four weeks from the date of the order.

2. The brief facts of the case are as follows:-

a. The petitioner, in the writ court, the respondent herein, had applied for the allotment of a flat under the New Pattern Registration Scheme, 1979 (for short 'NPRS Scheme') for a LIG Flat on 6th September, 1979. In the application form he gave two addresses, one a residential address at 25/5,

Ashok Nagar, P.O. Tilak Nagar, New Delhi and the second, an occupational address at 27/1, Ashok Nagar, Tilak Nagar, New Delhi. A demand-cum-allotment letter was issued with block dates 27th December, 1993 to 31st December, 1993 at the residential address but it was received back as undelivered.

b. The respondent, a cycle mechanic, was unable to make the payment and requested for the extension of time for making the payment by his letter dated 28th March, 1994. He had given his above mentioned occupational address in the said letter. He later sent a letter dated 15th April, 1994 requesting for cancellation of the allotment. This was duly received along with the third copy of challan for payment of cancellation charges. The address given in the letter dated 15th April, 1994 again was the occupational address of the respondent i.e. 27/1, Ashok Nagar, P.O. Tilak Nagar, New Delhi. Although the petitioner had indicated the occupational address in these letters, however, he did not formally intimate the Delhi Development Authority (for short 'DDA') about the change of his address.

c. A second draw was held in 1995 and a demand-cum-allotment letter was issued to the petitioner at the residential address mentioned in the application i.e. 25/5, Ashok Nagar, Tilak Nagar, New Delhi and the said letter was not received back. Therefore, the appellant-DDA contended that they had no occasion to suspect that the respondent had shifted from the said address. Since no payment pursuant to that allotment letter which was deemed by the DDA to have been served upon the respondents, was made, the allotment stood cancelled.

d. The respondent contended that he did not come to know about the second allotment. He learnt of it only on 21st November, 2003 when he followed up on a representation made by him.

e. The name of the respondent was included in the draw held on 24th November, 2004 pursuant to his request. In the said draw, the respondent was allotted a LIG flat bearing No. 28/1-2, Third Floor, Block-B, Dilshad Garden, Delhi. However, no demand-cum-allotment letter was issued despite the respondent visiting the office of the appellant on several occasions.

f. Thereafter, a writ petition bearing no.6287/2006 was filed wherein the learned Single Judge vide its order dated 23rd April 2007 allowed the petition directing the appellant to issue a demand-cum-allotment letter after the respondent makes the requisite payment within four weeks from the date of the order.

g. The appellant being aggrieved by the order dated 23rd April 2007 has filed the present Letters Patent Appeal.

3. The learned Single Judge by his order dated 23rd April, 2007 had inter alia held as follows: -

“6. As far as the respondent is concerned, the stand taken is that the inclusion of the petitioner's name in the draw held on 24.11.2004 was a mistake since this was not on account of DDA's fault in not sending the allotment letter to the correct address after it was informed of the changed address. On the other hand the cancellation took place on account of the petitioner's failure to make the payment pursuant to the allotment made in 1995.

7. To this Court it appears that there is much to be said on both sides. While the petitioner certainly did not inform the respondent formally about the changed address, it is clear that in his letters dated 28.3.1994

and 15.4.1994, he had indicated his address such as 27/1, Ashok Nagar, P.O. Tilak Nagar, New Delhi. The DDA also cannot be faulted since the second allotment letter sent to the residential address first indicated was not returned undelivered. However, the DDA did act on the request of the petitioner and included his name in the second draw held on 24.11.2004.

8. In the peculiar facts of the present case, this Court is of the considered view that the petitioner deserves equitable relief subject to terms. Having included the name of the petitioner in the draw held on 24.11.2004, and having allotted a flat to him, the DDA cannot plead prejudice. Of course, it is made clear that this will not form a precedent for future cases, and the merits of each of such case will have to be individually evaluated.

9. Learned counsel for the petitioner states that he is prepared to pay the costs prevalent as on three months after the date of the draw held on 24.11.2004 within four weeks and also any further amount as may be directed.

10. It is accordingly directed that the petitioner would be allotted the flat in question upon the petitioner paying pay the cost of the flat prevalent as on three months after the date of the draw held on 24.11.2004 within four weeks. In addition the petitioner is directed to pay interest @ 9% per annum on the demanded amount from 24.11.2004 till 26.4.2006, the date on which the interim order was passed by this Court. The DDA will now issue a demand-cum-allotment letter on the basis of the above directions

within four weeks from today and the petitioner will make a payment so demanded within four weeks thereafter. Subject to completion of formalities, the DDA will put the petitioner in possession of the flat within a further period of eight weeks.”

4. The learned counsel for the appellant Mr. Pawan Mathur contended that the scope of the policy formulated by the DDA cannot be enlarged in favour of the respondent so as to fall under the category of persons falling under the category of “wrong address” so as to give benefit to the respondent as the case of the respondent was not covered under the category of cases falling under “wrong address”. However, the learned Single Judge in his order dated 23rd April, 2007 held that it is clear that by his letters dated 28th March, 1994 and 15th April, 1994, the respondent had indicated his address as 27/1, Ashok Nagar, P.O.Tilak Nagar, New Delhi. The DDA acting on the request of the respondent had in fact included his name in the second draw held on 24th November, 2004. Therefore, the plea of the DDA about the petitioner's case not being covered under the wrong address cannot be sustained as the

respondents changed address having been communicated to the DDA by the letters dated 28th March 1994 and 15th April 1994, the DDA cannot now plead that his allotment stood cancelled. Moreover, the appellant is not justified in cancelling the allotment made to the respondent on the basis of the fact that the respondent did not intimate the appellant about the change of the address as in the first instance only, when the demand-cum-allotment letter issued with block dates 27th December 1993 to 31st December, 1993 sent by the appellant to the residential address of the respondent specified in the application form, was received back as “undelivered” by the appellant, it was thereafter sent to the occupational address of the respondent by the appellant itself which was also mentioned in the application form.

5. We are also of the view that in the peculiar facts and circumstances of the case, the respondent was rightly granted equitable relief. The respondent had applied under the NPRS Scheme for an LIG flat on 6th September, 1979 and had given two addresses one a residential address at 25/5, Ashok Nagar, P.O. Tilak Nagar, New Delhi and the second, an occupational address at 27/1,

Ashok Nagar, P.O.Tilak Nagar, New Delhi and through various letters had indicated his occupational address as 27/1, Ashok Nagar, P.O. Tilak Nagar, New Delhi. The appellant after receiving back the demand-cum-allotment letter issued with block dates 27th December to 31st December, 2003 had thereafter sent back this letter to his occupational address. It is also to be noted that after the cancellation of the allotment made after the second draw held in 1995, the respondent made a request to include his name in the draw that was held on 24th November, 2004. In the said draw, the respondent was allotted a LIG flat bearing No.28/1-2, third floor, Block-B, Dilshad Garden, Delhi. In our view, once a remedy had been sought by the respondent and an alternative allotment had been granted to the respondent, the appellant cannot later turn around and raise a plea that the respondent is not entitled to any equitable relief. Even otherwise, if the respondent is not entitled to any relief for falling under the category of persons covered under the category of “wrong address” cases, and even if assuming that the allotment to the respondent is cancelled on any other ground, the appellant had themselves given the right to the

respondent to rectify his mistake by allotting him a flat after including his name in the draw held on 24th November, 2004 pursuant to the request made by the respondent in spite of the fact that the allotment of the flat in 1995 was cancelled on account of the non-payment and non-compliance of the terms and conditions of the allotment letter. Though the appellant had sent the second allotment letter to the residential address of the respondent which was not returned as 'undelivered', however, the appellant did act on the request of the respondent and included his name in the second draw held on 24th November, 2004 and allotted him a flat. Once the flat has been allotted to the respondent, the appellant cannot plead prejudice as the respondent did acquire vested rights in the allotment.

6. The counsel for the appellant also contended that the change of address is noted in the records of the DDA when a proper formal application is made for the change of the residential address along with the proof of the change of the address. The learned Single Judge had also held that it is the admitted case that the respondent did not formally intimate the DDA about his change of

address. However, it is also the admitted position that the demand-cum-allotment letter , was issued with block dates 27th December, 1993 to 31st December, 1993 at the residential address but was also received back as undelivered by the appellant, who thereafter had then sent the said demand-cum-allotment letter to the occupational address of the respondent. At the initial stage the appellants had fulfilled its obligation of sending the letter to the occupational address when the letter was returned back as 'undelivered' from the residential address. The scheme under which the respondent had filed for the allotment of the flat also had separate columns for residential and occupational address. It is not correct on the part of the appellant to contend belatedly that the respondent had not fulfilled the conditions pertaining to the change of his residential address. Therefore, the contention of the appellant does not stand as the appellant had themselves rectified the mistake committed by the respondent at his request on 24th November, 2004 by including his name in the draw of lots.

7. The Hon'ble Supreme Court while dealing with the question of an

appellate court in an intra-court appeal interfering with the exercise of discretion under an appeal in the case of **B. Venkatamuni v. C.J. Ayodhya**.

Ram Singh, (2006) 13 SCC 449, held as follows:

“11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this Court in *Umabai v. Nilkanth Dhondiba Chavan* could not have been ignored by it, whereupon the learned counsel for the respondents relied:

“52. It may be, as has been held in *Asha Devi v. Dukhi Sao* that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

12. In the said decision, it was further noticed:

“50. Yet in *Manjunath Anandappa v. Tammanasa* it was held:

‘36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.’”

In our view, the learned Single Judge in exercise of his jurisdiction and discretion has taken a reasonable and plausible view in delivering the judgment and order dated 23rd April, 2007 and the facts noted by and the reasoning of the learned Single Judge does not warrant any interference with the findings as arrived at by the learned Single Judge particularly in view of the position of law laid down by the Hon'ble Supreme Court in the above decision.

8. It is apparent from the letter dated 28th March, 1994 and 15th April, 1994 that the appellant was aware of the changed address of the respondent. The respondent was residing as a tenant at the residential address mentioned which he vacated in 1993 at the time of making the registration itself and had therefore given the occupational address for future communications and the said address was also taken note of by the appellant. The respondent was allotted a flat at Kondli Gharoli at Delhi in the year 1995 which was cancelled as it did not come in the knowledge of the respondent till as late as 2003. During the period the respondent made repeated visits to the office of the appellant for an alternative flat and made several representations, which was

finally approved in 2003 for an alternative flat in the same zone, same cost in the year 1995 and the petitioner's name was included in the draw held on 24th November, 2004. The respondent has been endlessly trying to have the demand-cum-allotment letter issued by the appellant. The learned Single Judge in exercising the writ powers of the Court had therefore in our view, had rightly held that the respondent deserves equitable relief and should be allotted the flat upon paying the cost of the flat prevalent.

9. In this view of the matter, we are unable to differ from the findings as given by the learned Single Judge, particularly where the direction of the learned Single Judge subserves the interests of justice. Public bodies such as DDA must deal with citizens particularly those belonging to weaker sections of the society such as the respondent in a reasonable manner and not find ways and means somehow to find reasons to deny allotment on flimsy grounds.

10. The respondent in view of the above observations deserves the possession of the flat upon fulfilling the terms as laid down by the Hon'ble Single Judge and the appellant is directed to comply with the judgment / order

dated 23rd April, 2007 of the learned Single Judge on or before 12th September, 2008. Accordingly, the appeal is dismissed along with the pending applications.

MUKUL MUDGAL
(Judge)

MANMOHAN
(Judge)

August 08, 2008
sk/dr